

## **APPENDICES TO POLICY GUIDELINES (Version as of June 12, 2002)**

Appendix 1	Notice of Loss form
Appendix 2	Proof of Loss form
Appendix 3	Home Replacement Policy
Appendix 4	Policy on the Decline of Residential Real Property Values
Appendix 5	Increased Mortgage Interest Costs
Appendix 6	Request to Reopen Claim

FEMA

Cerro Grande Fire Assistance Act

OMB No. 3067-0280

Expires 11/30/2000

**NOTICE OF LOSS**

Page 1 of 4

- By filing this Notice of Loss, you are choosing to seek compensation for losses from the Cerro Grande Fire from the United States through the Cerro Grande Fire Assistance Act (CGFAA), Public Law 106-246, and NOT under the Federal Tort Claims Act or any other means. Your choice to seek reimbursement through this process cannot be changed.
- In order for the Federal Emergency Management Agency (FEMA) to consider your claim under the CGFAA, you must sign the **Verification of Truth of Information** and **Choice of the Cerro Grande Fire Claims Process** statements on page 3 of this Notice of Loss.
- FEMA's regulations describing the claims process will be published in the Federal Register on August 28, 2000.
- You may file your Notice of Loss at any time up until August 28, 2002.
- During the claims process, you will be able to supplement information regarding your losses.
- Mail the completed Notice of Loss to the **FEMA Office of Cerro Grande Fire Claims, P.O. Box 1480, Los Alamos, NM, 87544-1480.**
- For more information, please call 1-888-748-1853.

**CLAIMANT INFORMATION**

1. **Your Name** (First, Middle Initial, Last): \_\_\_\_\_
2. **What is your current address and contact information?**

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Day Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail address: \_\_\_\_\_

What is the best time to reach you? \_\_\_\_\_

**TYPE OF CLAIM** — Please submit a separate **Notice of Loss** for each type of claim.

3. **What type of claim are you filing?** (Check only one option)

- ☐ Individual or Household
- ☐ Business
- ☐ Government
- ☐ Pueblo
- ☐ Not-for-Profit
- ☐ Other \_\_\_\_\_

4. **Claims for individual or household**, please provide the following information. If you are filing on behalf of another person or persons, please include the following information for each person.

What are the claimant's names (including yourself, if you are a claimant)?	What is this person's relationship to you? (Example: self, spouse, child)	Is the claimant a member of a pueblo? (Yes / No)

If more space is required to identify additional claimants, please attach the information to this Notice of Loss.

5. **Claims for businesses, government agencies, pueblos, not-for-profits or others**, please provide the following information:

What is the claimant's name: \_\_\_\_\_

What is the claimant's address (if different from contact address provided on page 1)?

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

## LOSSES

6. **Describe your losses in general terms.** You will be able to supplement this information during the claims process. Please do not submit documentation at this time. Detailed information on your losses and their dollar value will be requested and collected during the claims process.

**Real Estate** (examples: home, business facility)

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**Other Personal Property** (examples: automobiles, furniture, electronics, equipment)

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**Other Losses** (examples: personal injury, lost wages, business interruption, public facilities, tribal subsistence)

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Additional pages may be attached.

- If yes, please name the insurance company:

- If yes, please describe:

- If yes, please describe:

## VERIFICATION OF TRUTH OF INFORMATION and CHOICE OF CERRO GRANDE FIRE CLAIMS PROCESS

*By filing this form all claimants whose names appear on this form attest that:*

- 1) *My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punishable by a fine of \$10,000 or imprisonment up to 5 years, or both (Section 1001 of Title 18, United States Code).*
- 2) *I choose to have all of my claims against the United States of America related to the Cerro Grande Fire reviewed, evaluated and compensated by the Federal Emergency Management Agency (FEMA) under the Cerro Grande Fire Assistance Act (CGFAA), Public Law 106-246, and **NOT** through any other means. By filing this form I am waiving the right to make a claim under the Federal Tort Claims Act or under any other statute, law or authority. My choice to seek reimbursement through this process cannot be changed. I understand that I can appeal FEMA's compensation decision to binding arbitration or to U.S. District Court.*

*For an individual or household claim, all claimants named on this Notice of Loss, except minors, must sign. For a business, not-for-profit organization, pueblo, or government claim, an authorized official must sign.*

Name (Print)

**Signature**

Relationship or Title

Date \_\_\_\_\_




**PRIVACY ACT NOTICE**

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the Notice of Loss form to which this Notice is attached. The authority for the collection of this information is Cerro Grande Fire Assistance Act, Public Law 106-246. The information you provide will be used to verify your identity, to verify your eligibility, and to verify any previous compensation made in connection with the Cerro Grande Fire. Some or all of the information you provide may be released to federal, state, and local government agencies or private organizations for the purpose of confirming your identity, your eligibility and any previous compensation or payments made in connection with the Cerro Grande Fire. The information may also be released when otherwise authorized by statute or regulation. Disclosure of the information by you is required in order for you to make a claim under the Act. It will not be possible to process your claim without the information.

**Routine Uses:** The Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., when the information will be used for a purpose that is compatible with the purpose for which we collected the information. The routine uses of this system are:

- a) Disclosure may be made to agency contractors who have been engaged to assist the agency in the performance of a contract service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 USC 552a.
- b) Disclosure may be made to a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.
- c) Disclosure may be made to other Federal agencies that FEMA has determined provided Cerro Grande fire-related assistance to claimant in order to ensure that benefits are not duplicated.
- d) Disclosure of information submitted by an individual Claimant may be made to an insurance company or other third party which has submitted a subrogation claim relating to such Claimant when it is necessary in FEMA's opinion to ensure that benefits are not duplicated and to efficiently coordinate the processing of claims brought by individuals and subrogees.
- e) Disclosure of property loss information may be made to local governments in Los Alamos, Rio Arriba, Sandoval and Santa Fe counties and the Pueblos of San Ildefonso and Santa Clara for the purpose of preparing community wide mitigation plans.
- f) When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.
- g) Disclosure may be made to the National Archives and Records Administration for the purpose of conducting records management studies under the authority of 44 U.S.C. 2904, and 2906.

**Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

**NOTICE OF PAPERWORK REPORTING BURDEN DISCLOSURE**

Public reporting burden for this form is estimated to average 45 minutes. Burden means the time, effort, and financial resources expended by persons to generate, maintain, retain, disclose, or to provide information to us. You may send comments regarding the burden estimate or any aspects of the form, including suggestions for reducing the burden to: Information Collection Management, Federal Emergency Management Agency 500 C Street SW, Washington, DC 20472. Please do not send your completed notice of loss to this address. You are not required to respond to this collection of information unless a valid OMB control number appears in the upper right corner of this form.



## Cerro Grande Fire Claims Administrative Office

### Proof of Loss

Claimant's Name

Claims Number

**Type of Claim (please check one):**

- ☐ Individual or household  
☐ Government  
☐ Not-for-profit

- ☐ Business  
☐ Pueblo  
☐ Other

This Proof of Loss relates to the Notice of Loss filed by the claimant on \_\_\_\_\_ and is submitted pursuant to the Cerro Grande Fire Assistance Act for losses resulting from the Cerro Grande Fire.

The following are the amounts claimed, by category, by the claimant:

**INDIVIDUALS**

**Personal injury**

General damages \$ \_\_\_\_\_  
Medical expenses \$ \_\_\_\_\_  
Lost Wages/Personal Income (injury related) \$ \_\_\_\_\_

**Real property**

Repair \$ \_\_\_\_\_  
Replacement \$ \_\_\_\_\_  
Decreased value \$ \_\_\_\_\_  
Reforestation or revegetation \$ \_\_\_\_\_  
Debris removal and other cleanup costs \$ \_\_\_\_\_  
Mitigation where home was damaged/destroyed \$ \_\_\_\_\_

Mitigation (other than for damage/destruction of a home) \$ \_\_\_\_\_

Personal property \$ \_\_\_\_\_

Lost wages/Personal Income (not injury related) \$ \_\_\_\_\_

Increased mortgage interest costs \$ \_\_\_\_\_

Flood Insurance Premiums \$ \_\_\_\_\_

Insurance deductible \$ \_\_\_\_\_

Temporary living/Relocation expense \$ \_\_\_\_\_

Tribal Subsistence \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

**BUSINESS LOSS:**

**Real property**

Repair \$ \_\_\_\_\_  
Replacement \$ \_\_\_\_\_  
Decreased value \$ \_\_\_\_\_

Reforestation or revegetation	\$ _____
Debris removal and other cleanup costs	\$ _____
Mitigation	\$ _____
Personal property/Tangible assets/inventory	\$ _____
Business interruption	\$ _____
Overhead Costs	\$ _____
Emergency Staffing Expenses	\$ _____
Employee wages for unperformed work	\$ _____
Increased mortgage interest costs	\$ _____
Flood Insurance Premium	\$ _____
Insurance Deductible	\$ _____
Temporary Rental/Relocation Expense	\$ _____
Other	\$ _____

**GOVERNMENTAL ENTITIES**

Real property	
Repair	\$ _____
Replacement	\$ _____
Decreased value	\$ _____
Reforestation or revegetation	\$ _____
Debris removal and other cleanup costs	\$ _____
Physical Infrastructure	\$ _____
Mitigation	\$ _____
Personal Property/Tangible Assets/Inventory	\$ _____
Firefighting costs and Emergency Response	\$ _____
Emergency Staffing Expenses	\$ _____
Administrative Expenses	\$ _____
Temporary Rental/Relocation Expense	\$ _____
Tribal subsistence	\$ _____
Other	\$ _____

Total Amount Claimed

\$ _____
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**A statement describing the nature and extent of each injury for which compensation is sought must be attached to this Proof of Loss**

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**YOU MUST SIGN THE CERTIFICATION ON PAGE 3 BEFORE  
SUBMITTING THIS PROOF OF LOSS**

## CERTIFICATION

This Proof of Loss consists of this form and the attached documents supporting the claim(s). The undersigned Claimant (or legal representative of the Claimant) certifies under penalty of perjury that all of the statements made in this Proof of Loss are true, complete and correct to the best of his/her knowledge and belief and are made in good faith. The undersigned Claimant (or legal representative of the Claimant) further certifies under penalty of perjury that no amount claimed in this Proof of Loss has been paid and will be paid by insurance, other assistance programs, or any other source. The Claimant (or legal representative) understands that a knowing and willfully false statement in the Proof of Loss can be punishable by a fine of \$10,000 or imprisonment up to 5 years, or both (Section 1001 of Title 18, United States Code).

Individual and Household Claimants Sign Below:

1. Name of Claimant \_\_\_\_\_

\_\_\_\_\_  
Claimant Signature

\_\_\_\_\_  
Date

2. Name of Claimant \_\_\_\_\_

\_\_\_\_\_  
Claimant Signature

\_\_\_\_\_  
Date

Other Claimants and Legal Representatives of Individual Claimants Sign Below:

Name of Claimant \_\_\_\_\_

\_\_\_\_\_  
Signature of duly authorized legal representative of claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Legal Representative or Relationship to Claimant



Cerro Grande Fire Assistance Act  
**PROOF OF LOSS**

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**PRIVACY ACT NOTICE**

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**Routine Uses:** The Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., when the information will be used for a purpose that is compatible with the purpose for which we collected the information. The routine uses of this system are:

- a) Disclosure may be made to agency contractors who have been engaged to assist the agency in the performance of a contract service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 USC 552a.
- b) Disclosure may be made to a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.
- c) Disclosure may be made to other Federal agencies that FEMA has determined provided Cerro Grande fire-related assistance to claimant in order to ensure that benefits are not duplicated.
- d) Disclosure of information submitted by an individual Claimant may be made to an insurance company or other third party which has submitted a subrogation claim relating to such Claimant when it is necessary in FEMA's opinion to ensure that benefits are not duplicated and to efficiently coordinate the processing of claims brought by individuals and subrogees.
- e) Disclosure of property loss information may be made to local governments in Los Alamos, Rio Arriba, Sandoval and Santa Fe counties and the Pueblos of San Ildefonso and Santa Clara for the purpose of preparing community wide mitigation plans.
- f) When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.
- g) Disclosure may be made to the National Archives and Records Administration for the purpose of conducting records management studies under the authority of 44 U.S.C. 2904, and 2906.

**Effect of Failure to Respond:** Disclosure is mandatory. You must sign the Proof of Loss form in order to receive compensation under the Cerro Grande Fire Assistance Act (44 CFR §295.30).

**NOTICE OF PAPERWORK REPORTING BURDEN DISCLOSURE**

Public reporting burden for completing this form, collecting documentation and for conducting the associated interview is estimated at 22.5 hours. Burden means the time, effort, and financial resources expended by persons to generate, maintain, retain, disclose, or to provide information to us. You may send comments regarding the burden estimate or any aspects of the form, including suggestions for reducing the burden to: Information Collection Management, Federal

Emergency Management Agency 500 C Street SW, Washington, DC 20472. Please do not send your completed notice of loss to this address. You are not required to respond to this collection of information unless a valid OMB control number appears in the upper right corner of this form



# Office of Cerro Grande Fire Claims

Post Office Box 1480  
Los Alamos, New Mexico 87544

## CERRO GRANDE FIRE ASSISTANCE ACT HOME REPLACEMENT POLICY

(November 1, 2000, as amended October 9, 2001 and April 17, 2002)

The Office of Cerro Grande Fire Claims (OCGFC) intends to compensate eligible claimants whose homes<sup>1</sup> were destroyed by the fire, fairly and reasonably, for the cost to build a replacement home in accord with current codes using modern, readily available building materials of like kind and quality. The amount of eligible compensation will be determined through one of two compensation options: the Square Foot Replacement Rate or an Individual Review. Claimants must select one of the two options prior to the receipt of full or partial compensation for the replacement cost of the destroyed home and no later than the time claimants sign the Proof of Loss. Once claimants have selected one of the options, the decision will be final and the other option will no longer be available. OCGFC will deduct from the home replacement cost any duplicative insurance proceeds. If the claimant received a Small Business Administration (SBA) loan for the home, OCGFC will repay the disbursed loan amount and deduct it from the home replacement award prior to compensating the claimant.

### OPTION I: Square Foot Replacement Rate

Claimants who choose this option will receive "Base Costs" which is a lump sum payment based upon the square footage of the destroyed home. In addition claimants will receive "Other Costs," which will compensate them for site work, appliances, design fees, communications, computer or cable systems, fireplaces, landscape irrigation systems, and landscaping. In order to expedite and simplify the process for providing full compensation for replacing a home under this option, claims reviewers will work with claimants to calculate the Base Costs award. Once this has been determined, and identification of all titleholders has been concluded, claimants can expect compensation for Base Costs within three to six weeks.

#### BASE COSTS:

Base Costs represents full and final compensation for the destroyed home, except for the items listed under Other Costs:

Payment per:	Single Home	Family Duplex	Quadriplex
square foot of <b>Home</b> (heated, habitable space); permit costs are included in this rate:	\$160	\$150	\$140
square foot of <b>Outbuildings</b> (non-heated or uninhabitable covered spaces <sup>2</sup> ):	\$80		
square foot of roof area of a <b>Pitched Roof</b> , if applicable:	\$5		
linear foot of <b>Metal Gutters</b> and <b>Downspouts</b> :	\$3.50		

<sup>1</sup> This policy does not apply to mobile or manufactured homes.

<sup>2</sup> Outbuildings refer to the following, provided they existed before the fire: covered porches and covered decks that were not part of the original construction, garages, workshops, entries, and carports. Note: Portable sheds are not included in this category. Claimants may make a claim under personal property for damaged or destroyed portable sheds.

Base Costs include all required plans, building and permit fees. Site work included in the base costs includes such items as trash removal and cleanup, site preparation, utilities (extending 5' from the building foundation line), foundation earthwork (excavation, to a depth of 3 foot, backfill of stabilized fill material of an approved type), and compaction of all fill.

Claims reviewers will work with claimants to determine the category (Single Family, Duplex, Quadruplex) and square footage of the destroyed home; the square footage of outbuildings; the square footage of the roof area if the destroyed home had a pitched roof; and the linear feet of metal gutters and downspouts. If a claimant and a claims reviewer reach an impasse on any of these items, other than the dollar per square foot, the Director of the Office of Cerro Grande Fire Claims will conduct an expedited review and decide the dispute. This decision will be final. The claimant will be advised of the Director's decision before he or she makes a binding decision to choose Option I.

Upon committing to Option I, claimants must accept the Base Costs damage award as full and final compensation for replacement of the destroyed home based upon the Square Foot Replacement Rate. The Base Costs damage award is final and binding. Claimants who choose Option I will be required to sign an irrevocable election agreeing to these terms in order to receive a check for the Base Costs items. It is not necessary that claimants reach an agreement with OCGFC on items listed under Other Costs in order to receive the Base Costs compensation of Option 1. However, claimants are encouraged to resolve their claim for Other Costs at the same time, as Base Costs are determined.

#### OTHER COSTS:

With respect to Other Costs, claimants retain all of their rights under the Cerro Grande Fire Assistance Act and regulations including the two levels of appeal.

a) **All Option I claimants**, regardless of whether they choose to rebuild their homes, will receive, in addition to the Base Costs, the following:

- **Design Fees**

A design fee in the amount of 1 percent of the estimated construction cost and associated site work necessary to rebuild the home according to code on the basis of the design prior to the fire;

- **Site Work**

The reasonable costs for: utility lines, meter and connections, and surveying; and provided they existed prior to the fire: driveway paving, uncovered patios and decks, fencing and retaining walls.

- **Inadequate Backfill and Compaction**

All compensation for additional site work due to inadequate backfill and compaction will be considered on a case-by-case basis. A Claimant should work with his or her Claims Reviewer to determine how OCGFC policy on this additional site work may affect compensation on the claim.

If a claimant's home was destroyed by the Cerro Grande Fire, and the Claimant believes the area of the original load-bearing foundation ("original load-bearing footprint") of the home was improperly backfilled and/or compacted during cleanup and debris removal, through no fault of the Claimant, the Claimant can be compensated under Section 295.21(d) of the OCGFC Policy Manual, for the reasonable cost of obtaining a soils report to determine if the structure's original footprint may have been improperly backfilled or compacted. A claimant may only receive compensation for one soils report as explained in Section 295.21(d).

For purposes of application of this section, the original footprint is considered to have been improperly or inadequately backfilled and/or compacted if the backfill and/or compaction was less than the minimum required under current applicable industry building standards to render the lot suitable for building at the site of the original load-bearing footprint.

If the soils report shows that the area of the original load-bearing footprint was inadequately backfilled or compacted, a claimant may be eligible for the reasonable cost of excavating the improper fill and for the costs of the additional site work required to backfill and compact the area of the original load-bearing footprint of the home to the minimum standards required to render the site of the original load-bearing footprint suitable for building under current soil compaction requirements.

To be eligible for compensation under this section, there must be a soils report for the lot on which the destroyed home sat that meets the requirements of 295.21(d). The report must show that the additional site work is necessary for the original load-bearing footprint of the destroyed home. OCGFC will provide a worksheet to be used in determining the reasonable cost of this additional site work, using unit pricing set by the Associated General Contractors of America ("AGC") for soil removal, backfill and compacting and requirements of Los Alamos County and current applicable building industry standards. OCGFC reserves the right to have the plans and costs reviewed by a licensed architect or engineer, at its own expense, and to award only those costs that OCGFC determines to be reasonable after such review.

Anyone who purchases the original lot after May 4, 2000, does not have a claim against the United States for inadequate compaction and backfill on that lot. Buyers of such lots are expected to investigate in advance of purchase the suitability of the lot for building. If investigation reveals that additional compaction and backfill are required, then the buyer should negotiate those considerations into the final sales price.

To safeguard against a duplication of benefits, any compensation awarded for additional site work due to improper backfill and compaction will be reduced by the amount received for site work under the Home Replacement Policy, based on type of home destroyed by the Fire, at the rate of: (a) single family: \$2.00/sq. ft.; (b) duplex: \$3.78/sq. ft.; (c) quadriplex: \$3.26/sq. ft.

- **Appliances**

All major appliances that existed in the destroyed home (e.g. dishwasher, refrigerator, stove, and washer/dryer) based on new models of similar make, model and type.

- **Communications, Computer or Cable Systems**

Above and beyond that which is already provided for in the Square Foot Replacement Rate, all extraordinary communications infrastructure that residents had installed prior to the fire.

- **Fireplaces**

Fireplaces that existed in the structure, on top of what was included in the Base Costs calculation. The square footage was calculated on the assumption that single family homes had 1 fireplace, and quads and duplexes had no fireplaces.

- **Landscape irrigation systems**

Reasonable replacement costs for the existing pre-fire landscaping irrigation systems.

- **Landscaping**

Under the Landscaping Policy, claimants are eligible for compensation for the damage or destruction of landscaping on their residential property. Compensation will be based upon the value of the damaged or destroyed landscaping – including trees, shrubbery, grass and



other landscaping - and will be provided up to, and be capped at, 25 percent of the pre-fire market value of the property, including both the land and the home.

- b) **In addition, all Option I claimants** who choose to rebuild will receive the items listed under "Claimants Who Choose to Rebuild."

## **OPTION II: Individual review**

Claimants who choose this option will be compensated in accordance with 44 CFR, Part 295, based upon the reasonable cost to replace his/her individual home according to applicable codes on the basis of the design prior to the fire. Compensation will be based on individual elements of the destroyed home as opposed to Option 1, which is based on a dollar per square foot replacement rate. The amount awarded under this option may or may not be higher than what would have been funded under Option 1.

This process requires that claimants provide details about their destroyed home. It may take several months for claims reviewers and claimants working together to complete the process.

Claimants who have incorporated numerous upgrades and other extraordinary features into their home, and therefore believe their home will cost more to replace than the amount awarded under Option I, may want to choose Option II.

OCGFC will NOT compensate costs to replicate construction materials that are no longer reasonably and readily available, that do not meet code or that are not reasonably necessary to rebuild the home.

Claimants who choose to have their home evaluated under Option II by signing the irrevocable election will not be able to choose Option I at a later date.

- a) **All Option II claimants**, regardless of whether they choose to rebuild their homes, will receive, in addition to the cost to replace their home, the following:

- **Design Fees**

A design fee in the amount of 1 percent of the estimated construction cost and associated site work necessary to rebuild the home according to code on the basis of the design prior to the fire.

- b) **In addition, all Option II claimants** who choose to rebuild will receive the items listed under "Claimants Who Choose to Rebuild."

## **CLAIMANTS WHO CHOOSE TO REBUILD**

**All claimants who choose to rebuild under either Option I or II** will also receive the following:

- **Mitigation**

Per the Mitigation Policy, claimants are eligible to receive an additional 15 percent to perform cost-effective fire mitigation measures that are not required by local code. The 15 percent will be based upon the eligible amount required to replace or repair the home and restore the land. Claimants will be able to choose fire mitigation from an approved "menu" of measures. Mitigation measures must be approved by the OCGFC and must be performed in accordance with the building permit and applicable environmental laws. Any funds provided for mitigation measures must be spent on the measures that have been approved.

- **Architect Fees**

If claimants use an architect, OCGFC will pay the actual cost of the architect up to an additional 9 percent of the estimated construction cost and associated site work necessary to rebuild the home according to code on the basis of the design prior to the fire. If the claimant has elected to implement mitigation measures in accord with the Mitigation Policy, these costs will be included in the estimated construction cost and associated site work for purposes of determining the appropriate percentage.

- **Engineering Fees**

OCGFC will compensate claimants for reasonable engineering costs, if the applicable local government or an architect requires an engineer.

- **Performance Bond**

Should the contractor obtain a Performance Bond to ensure an appropriate level of quality during the construction, OCGFC will compensate claimants an additional 1 percent of the estimated construction cost and associated site work necessary to rebuild the home according to code on the basis of the design prior to the fire. If the claimant has elected to implement mitigation measures in accord with the Mitigation Policy, these costs will be included in the estimated construction cost and associated site work for purposes of determining the appropriate percentage.

### **Specific Site Work Required Under Los Alamos County and Other Applicable Codes.**

OCGFC will compensate eligible claimants rebuilding under either Option I or II the reasonable costs of specific site work (e.g., drainage or off street parking pads) required by Los Alamos County and/or other applicable building codes to meet minimum building requirements to rebuild the original structure.

Eligibility. To be eligible, Claimants must have owned a home that was destroyed by the Cerro Grande Fire and must be rebuilding on a lot located in Los Alamos County.

Compensation. Eligible claimants may choose between the two options that best meet their needs when calculating compensation for this specific site work.

- **Option A:** Working with Los Alamos County, OCGFC has determined the specific site work required by Los Alamos County and other applicable building codes to rebuild the original structure on their lot. Using AGC unit pricing, OCGFC has calculated the minimum cost for each code requirement. Claimants will work with their Claims Reviewer to calculate the total cost of the specific site work required to rebuild the original structure.
- **Option B:** Claimant must provide a request for compensation for specific site work in which a licensed architect, hired by the Claimant, at Claimant's expense, has provided:
  - 1) A copy of the plans for rebuilding the original structure for which compensation is sought;
  - 2) An itemized listing of the additional work required to meet current code or other regulatory requirements with reference to the specific sections of the Los Alamos County Building Code or other applicable code(s) or laws that require the work be performed as depicted on the plans and the cost associated with each item; and
  - 3) A written statement by the architect, placed on or attached to the plans, stating that the plans for which the additional site-work compensation is sought include no more than the minimum requirements needed to rebuild the destroyed original

structure under Los Alamos County Building Codes and/or other applicable building codes. Appendix A is a sample of the statement.

OCGFC reserves the right to have the plans, itemized list of required work and the cost associated with each item reviewed by a licensed architect or engineer, at its own expense, and to award compensation under Option B based on the recommendation of the OCGFC-contractor architect or engineer rather than on the estimates provided by claimant's architect or engineer.

Duplication of Benefits. To safeguard against a duplication of benefits, any compensation awarded for specific site work will be reduced by the amount compensated for corresponding Other Costs under the Home Replacement Policy, such as parking pads, sidewalks, driveways, etc.

Waivers. If the Los Alamos County code allows for waiver of a requirement, the claimant, must in good faith, request in writing a waiver of the Code requirement. The waiver must be denied before compensation for the specific site work will be considered. Additionally, the claimant must provide a copy of the written waiver request and the County's action on it to the Claims Reviewer for inclusion in the file before compensation for additional site work under this section can be considered. As used in this section, the term "in good faith" means that the Claimant shall use the best possible arguments for granting the waiver, just as the Claimant would have done had the Claimant been rebuilding on the lot in question in the absence of the possibility of receiving additional compensation. The request for waiver must be something more than a perfunctory request -- it must be a good-faith, bona fide attempt to obtain a waiver.

## **Soil Stabilization Structures**

OCGFC may compensate eligible Claimants for the reasonable cost of constructing a soil stabilization structure that meets the minimum Los Alamos County or other building code requirements to stabilize soil and/or prevent erosion. OCGFC will review each request for compensation on a case-by-case basis.

To be eligible for compensation under this paragraph, the claimant must (1) have owned a home that was destroyed by the Fire; (2) demonstrate the soil stabilization structure is required as a result of the Fire; and (3) must be rebuilding on the lot where the destroyed home sat. In addition, Los Alamos County must have determined that a soil stabilization structure is required, and the appropriate Los Alamos County official must state in writing that the structure is necessary to meet code requirements.

If the proposed cost for the soil stabilization structure is over \$5,000, OCGFC reserves the right to have the plans and cost reviewed by a licensed architect or engineer, at its own expense, and to award only those costs which OCGFC determines to be reasonable after such review.

To safeguard against a duplication of benefits, any compensation awarded for a soil stabilization structure will be reduced by the amount received under the Home Replacement Policy for a soil stabilization structure originally located on the lot.

Through the Home Replacement Policy, OCGFC has provided additional conditional compensation for claimants who choose to rebuild. This additional conditional compensation is described above and is available only to claimants who intend to rebuild under Option I or Option II. Claimants who intend to rebuild will be required to sign the statement shown in Appendix B, and will be required to demonstrate the intent to rebuild by making substantial progress towards rebuilding by August 28, 2003. As used herein, the phrase "substantial progress towards rebuilding" means, as a minimum, that the claimant must have broken ground and laid a foundation for a replacement home by August 28, 2003. A replacement home does not have to be of the same type or kind as that destroyed. For example, owners of one-quarter interest in a quad may build a single-family or duplex or other

similar structure. Claimants who fail to make substantial progress towards rebuilding by August 28, 2003, may be required to pay back any funds paid to them under this section, but are not required to pay back funds paid as compensation under Option I Base Costs paid under subparagraph a) as "Other Costs."

### **A Special Note for Claimants with Closed Files**

A claim that was closed before the effective date of this policy clarification (April 17, 2002) will automatically be reopened for consideration of Claimant's request for additional or specific site work compensation. The request to reopen for additional or specific site work must be in writing and must be received by OCGFC on or before August 28, 2002.

### **A Special Note for Quad and Duplex Owners**

If claimants' development is a condominium or cooperative or if several unit owners jointly or commonly own the property, please consider this information carefully. Each unit owner will only be compensated for what he or she individually owns. If an association owns a portion of the development, the association will be compensated for what it owns. If property is jointly or commonly owned by several unit owners, OCGFC will calculate the damages owed to each owner for the jointly or commonly owned areas in accordance with applicable real estate laws. An individual unit owner can elect Option I even if the association elects Option II and vice versa. However, all owners of an individual unit within a quad or duplex must elect the same Option. To facilitate ownership determinations, the OCGFC encourages quad and duplex owners to submit any ownership documentation they have as early as possible. This documentation may include, but is not limited to, association bylaws and CC&Rs (Covenants, Conditions and Restrictions).

SAMPLE

**STATEMENT BY LICENSED ARCHITECT OR ENGINEER**

Based on my professional knowledge, information and belief, the attached plans contain no more than the minimum requirements necessary to rebuild the original structure depicted in the plans in accordance with applicable Los Alamos County Code and/or other applicable code or legal requirements. For each item of site work (curbing, driveway, parking lot, drainage, soil stabilization structure, etc.), I have attached a description of the item, a reference to the applicable requirement (e.g., LAC Code Section, law, Fire Code, etc.), and an explanation of how the planned construction meets the minimum requirements under the applicable section of code or law.

\_\_\_\_\_  
NAME

\_\_\_\_\_  
Date



**STATEMENT OF INTENT TO BUILD**

The signature(s) below confirm(s) that I/we<sup>3</sup> intend to build a replacement for the home that was destroyed, and that I/we am/are, therefore, eligible to receive the additional compensation provided to claimants who choose to rebuild as described in the Home Replacement Policy (November 1, 2000, as amended).

I/we understand that the OCGFC Home Replacement Policy provides that by electing Option I, I/we have accepted the base costs damage award as full and final compensation for replacement of my/our destroyed home based on the square foot replacement rate. I/we further understand that acceptance of Option I still allows me/us to claim for certain additional or other costs, such as design fees, site work, etc. Finally, I/we understand that OCGFC has through the Home Replacement Policy provided additional conditional compensation for claimants who choose to rebuild. The additional conditional compensation costs are described under the heading "Claimants Who Choose to Rebuild" of the Home Replacement Policy and are available only to claimants who intend to build under Option I or Option II. These additional costs include such things as mitigation costs provided under 44 C.F.R. § 295.21(h), architect fees, the costs of a performance bond, specific site work, and soil stabilization structures.

I also understand that OCGFC requires that I/we demonstrate my/our intent to rebuild by making substantial progress towards rebuilding by August 28, 2003. "Substantial progress towards rebuilding" means, as a minimum, that I have broken ground and laid a foundation for a replacement home. If I/we don't demonstrate substantial progress towards rebuilding by August 28, 2003, I/we will be required to repay any conditional additional funds paid to me/us under the Home Replacement Policy for homeowners who are rebuilding. Funds paid as Base Costs compensation and under subparagraph a) of "Other Costs" in the Home Replacement Policy do not require repayment if I/we decide not to rebuild.

\_\_\_\_\_  
Claimant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Claimant's Signature<sup>4</sup>

\_\_\_\_\_  
Date

<sup>3</sup> Cross out inapplicable language throughout.

<sup>4</sup> A spouse's signature is required if the destroyed property was owned by a married couple.



# Office of Cerro Grande Fire Claims

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## CERRO GRANDE FIRE ASSISTANCE ACT POLICY ON THE DECLINE OF RESIDENTIAL REAL PROPERTY VALUES (April 2, 2001)

### BACKGROUND

#### 1. Final Rule

Section 295.21(e) of the Final Regulations implementing the Cerro Grande Fire Assistance Act (CGFAA) provides that compensatory damages may be awarded for reduction in the value of real property that was owned prior to the Cerro Grande Fire (Fire) if:

- (1) The claimant sells the real property in a good faith, arm's length, transaction that is closed no later than August 28, 2002 and realizes a loss relative to the value that would have been obtained in the absence of the Fire ("realized loss"); or
- (2) The claimant can establish that the value of the real property was permanently diminished as a result of the Fire despite the fact that the real property was not sold ("unrealized loss").

#### 2. Analysis

##### PricewaterhouseCoopers Analysis of the Los Alamos Post-Fire Residential Real Estate Market

The Office of Cerro Grande Fire Claims (OCGFC) retained PricewaterhouseCoopers (PwC) to determine if the Fire had reduced residential real estate market values in Los Alamos County. PwC issued a preliminary report, which the OCGFC released to the public on February 5, 2001. Public comments were received through:

- 1) a public forum on February 7, 2001; and
- 2) electronic mail from February 5 - 15, 2001.

Based on this feedback, PwC revised its preliminary report, taking into account additional data, and using additional statistical methodologies. These methodologies included an analysis of pre-Fire and post-Fire prices based on pre-Fire price trends in Los Alamos County and on price trends in comparable communities.

##### Findings

PwC's findings were issued in its March 28, 2001 final report. In computing changes in housing prices in Los Alamos County, PwC used data for residential sales occurring from January 1, 1996 to January 31, 2001. Based on those computations, PwC found:

- There was a post-Fire decline in the average value of single-family houses in Los Alamos County between 3% and 11% (average decline). While the average decline in value for all single-family houses sold in Los Alamos County between May 2000 and January 31, 2001 is in this range, specific houses might have experienced higher or lower rates of diminution outside of this range.
- Except for the Eastern area, diminution in property values did not appear to be statistically significant for duplexes, quads, or other non-single-family units. However, as in the case of single-family homes, particular units could have experienced diminution.

The March 28, 2001 Final Report is available in the Los Alamos and White Rock Cerro Grande Customer Service Centers and is available on the internet at [www.fema.gov/cerrogrande](http://www.fema.gov/cerrogrande).

## **POLICY**

The OCGFC will handle diminution claims caused by the Cerro Grande Fire in Los Alamos County<sup>5</sup> for both realized and unrealized losses on a case-by-case basis as follows:

### **1. Realized Losses**

Compensatory damages will be awarded to a Claimant for diminution in the value of real property, if:

1. the decline in property value is due to the Cerro Grande Fire,
2. the Claimant owned the property prior to the Fire,
3. the property was sold in a good faith, arm's length transaction that was entered into after May 3, 2000 and is closed no later than August 28, 2002.

In adhering to this rule while attempting to exert the least amount of influence on the real estate market, the OCGFC will determine the diminution value through a two-part equation which calculates first a "but-for-Fire" value and then subtracts the actual sales price to arrive at the diminution amount. The equation is:

- a)  $(\text{pre-Fire value}) \times (\text{growth index}) = \text{but-for-Fire value}$
- b)  $(\text{but-for-Fire value}) - (\text{sales price}) = \text{realized diminution amount}$

#### Pre-Fire Value

In order to arrive at a pre-Fire value of the property (the value of the property as of May 3, 2000), the OCGFC will request and compensate claimants for the reasonable cost to obtain a pre-Fire appraisal of the property in question. In order to ensure consistency, accuracy, and fairness to all claimants, the OCGFC will develop guidelines as to what additional information is required in the pre-Fire appraisal. These guidelines will be provided to each claimant by the claims reviewer prior to requesting the appraisal.

#### But-For-Fire Value

In order to calculate the diminution value of the property, the Claims Reviewer will need to adjust the pre-Fire value to the calculated value that the property would have been at the time of the sale, if the Fire had not occurred (this is the but-for-Fire value). This will be accomplished by using a model specifically developed to reflect price trends as analyzed by PwC.

#### Diminution Value

The diminution value will be determined by subtracting the sales price from the but-for-Fire value. If the diminution value is outside of the average decline as identified in the PwC analysis, the Claims Reviewer may use other resources to confirm, substantiate, and/or determine the diminution value.

The OCGFC intends to request subsequent analyses of the Los Alamos County residential real estate market until the real estate market returns to price levels that would have prevailed in the absence of the Fire, or up through the second quarter of 2002, whichever is sooner. This will

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<sup>5</sup> Because diminution claims have only been received from Los Alamos County, the OCGFC believes that only the Los Alamos County real estate market suffered a diminution in property values. However, any claimant who feels that he/she has a diminution claim as a result of the Cerro Grande Fire may file a Notice of Loss and substantiate the claim. The OCGFC will decide the claim and fix compensation, if any, based upon supporting documentation provided by the Claimant.

assure that future developments in the local real estate market are understood and properly incorporated in the OCGFC policy.

## **2. Unrealized Losses**

In order to determine if a claimant's residential real property suffered a permanent decline in property values, even though the claimant does not plan to sell his or her property in the near future (unrealized loss), the OCGFC plans to conduct another follow-up analysis of the residential real estate market in Los Alamos County, which will be released in the second quarter of 2002. The OCGFC will entertain such claims at that time.

If the findings of this follow-up analysis indicate that properties continue to reflect a decline in the market value due to the Fire, the OCGFC will compensate those claimants for whom an ongoing, permanent but unrealized loss in residential real estates values, can be substantiated at that time. Those claimants will be allowed to either file a first time Notice of Loss, or reopen a Notice of Loss as set forth in Section 295.34(d) of the Final Rule to claim such damages. However, nothing in the policy should be construed as prejudging whether any specific claim for unrealized loss in real property value (diminution) will be paid. Claims are decided on a case-by-case basis by authorized officials who determine and fix compensation, if any.

### **Special note to claimants whose properties were physically damaged by the Cerro Grande Fire:**

*To safeguard against double recovery, claims reviewers will take into account compensation claimants may have received or will receive under the CGFAA and/or from insurance recoveries to repair/replace structures and restore land damaged by the Fire. Claims reviewers will review with claimants how these values will be factored into diminution claims for both realized and unrealized losses.*



## Office of Cerro Grande Fire Claims

### RESIDENTIAL INCREASED MORTGAGE INTEREST COST POLICY

(April 23, 2001)

Pursuant to the CGFAA, an increase in mortgage interest costs due to the Cerro Grande Fire is a compensable loss.

In order to compensate claimants for increased mortgage interest costs on the difference between the interest rate of the mortgage on a home destroyed by the fire, and any higher interest rate on a mortgage claimant is now carrying on a rebuilt or replacement home, the OCGFC has determined it will pay the costs associated with procuring a new mortgage on the property at an interest rate comparable to that of the original mortgage under the same or comparable terms and conditions.

Claimants who have lost a residence as a result of the fire, can be compensated for increased mortgage interest costs if --

- The residence was being used as a primary or secondary residence and was secured by a mortgage(s) (the initial mortgage(s)); and
- Claimant has been compensated for the loss of the residence; and
- Claimant has paid off the initial mortgage(s) with the lender; and
- Claimant has purchased or rebuilt a residence and has secured a mortgage (interim mortgage) on the replacement residence at a higher interest rate -- **OR** -- will purchase or rebuild a residence prior to August 28, 2002, on which he or she will potentially secure a mortgage at a higher interest rate.

Claimants who have purchased or rebuilt a replacement residence **prior** to May 1, 2001 can be compensated as follows:

1. The closing costs (i.e., lender documentation and processing fees, costs for an appraisal, credit reports, title insurance and other underwriting fees and expenses required by the lender) paid by the Claimant to close on the interim mortgage.
2. The points necessary to buy down the interest rate on a new mortgage to a rate comparable to that of the initial mortgage(s) in the same principle amount and under the same terms and conditions as that in place at the time of the fire. For an adjustable rate mortgage, the percentage rate on the day of the loss will be used. If claimant has obtained a higher rate mortgage with a principle amount that is greater than the payoff of the initial mortgage, the lesser principle amount will be used.
3. The difference paid in interest from the first payment of the interim mortgage to the month the new mortgage is closed.



4. Closing costs associated with the new mortgage (i.e., lender documentation and processing fees, costs for a current appraisal, if necessary), credit reports, title insurance, and other underwriting fees and expenses required by the lender to be paid by the Claimant.

For claimants who will purchase or rebuild a replacement residence **after** May 1, 2001:

1. The points necessary to buy down the interest rate on a new mortgage to a rate comparable to that of the initial mortgage(s) in the same principle amount and under the same terms and conditions as that in place at the time of the fire. For an adjustable rate mortgage, the percentage rate on the day of the loss will be used. If claimant has obtained a higher rate mortgage with a principle amount that is greater than the payoff of the initial mortgage, the lesser principle amount will be used.
2. Closing costs associated with the new mortgage (i.e., lender documentation and processing fees, costs for a current appraisal, if necessary), credit reports, title insurance, and other underwriting fees and expenses required by the lender to be paid by the Claimant.

In order to document the increased mortgage expenses, all claimants will have to provide the following:

- A copy of the initial mortgage and promissory note marked paid in full by the lending institution or other acceptable document from the lending institution showing payment.
- A copy of the Settlement Statement (HUD-1) from the lending institution for the new mortgage.
- A copy of the new mortgage and promissory note showing the new terms, interest rate.

Additionally, claimants who have rebuilt or purchased a replacement home prior to May 1, 2001, will need to provide a copy of the interim mortgage and promissory note showing the terms and interest rate and the Settlement Statement (HUD-1) for the interim mortgage.



## Office of Cerro Grande Fire Claims

### REQUEST TO REOPEN CLAIM

Date: \_\_\_\_\_

To: Director  
Office of Cerro Grande Fire Claims  
Post Office Box 1480  
Los Alamos, NM 87544-1480

Re: Claim No. \_\_\_\_\_

Name of Claimant(s) \_\_\_\_\_

I request that my Claim No. \_\_\_\_\_, be reopened, pursuant to 44 C.F.R. § 295.34, Reopening a Claim, for the following reason(s) (*check all that are applicable*):

**NOTE TO CLAIMANT:** The request for any of the following items must be received in the OCGFC not later than August 28, 2002.

- ☐ I am eligible for reimbursement for a flood insurance premium that was due and paid on or before May 12, 2002, but after my claim was closed. *Claimant must attach copies of receipt for payment and the declaration page.*
- ☐ I have incurred home replacement costs in excess of those awarded under Option I "Other Costs" or Option II of the Home Replacement Policy.
- ☐ I have begun rebuilding my home and have incurred additional alternative living expenses that are eligible for reimbursement.
- ☐ I have additional items of personal property that were not included in the original Proof of Loss.
- ☐ Other (good cause must be demonstrated). *Claimant must attach a detailed explanation, including supporting documentation, as to why the loss was not included on the Notice of Loss or the Proof of Loss, and why the Director should allow the claim to be reopened.*
- ☐ I have closed on the sale of real property not later than August 28, 2002 and want to file a diminution claim under § 295.21(e).
- ☐ I have incurred or will incur additional and/or specific site work under the Home Replacement Policy.

**NOTE TO CLAIMANT:** *The request for this item must be received in the OCGFC not later than August 28, 2003.*

☐ I seek mitigation assistance under § 295.21(d)(3) Mitigation. *Claimant may attach a signed and completed Cerro Grande Mitigation Proposal form, if available. (OMB Form No. 3067).*

I understand that reopening my claim does not guarantee that compensation will be paid for the items included in this request. Reopening simply means that my claim will be reopened to permit consideration of these new claimed losses.

In the case where a request is being made to the Director to reopen a claim for “good cause,” I understand the Director will base the decision to reopen on supporting documentation provided and render a decision accordingly. If this request is approved, a Claims Reviewer will contact me. If the request is denied, a copy of the Director’s determination will be mailed to me.

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Claimant

**FOR INTERNAL OCGFC USE ONLY – DO NOT WRITE IN THIS BLOCK**

Claim No. \_\_\_\_\_

NOTE: For only the first five items of the Request Form -- if the checked category is not identified in the NOL or POL and the request is not received by August 28, 2002, the claim cannot be reopened. (44 C.F.R. § 295.11)

☐ Automatic Reopen -- Date \_\_\_\_\_  
By \_\_\_\_\_

☐ Good Cause -- The request is:  
☐ Approved ☐ Denied

\_\_\_\_\_  
Director, Office of Cerro Grande Fire Claims

Date \_\_\_\_\_

Notes: